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FEB 2 1984
ALEXANDER L. STEVAS,
CLERK

No. 83-772

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

SNOWSHOE COMPANY,
a West Virginia corporation,

Petitioner,

vs.

JOHN J. KRUSE and
LEONARD K. JACKSON,

Respondents

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the United States District Court for the Southern District of West Virginia (hereinafter the "District Court") abused its discretion by exercising jurisdiction and issuing a preliminary injunction in favor of the plaintiffs in a case in which the District Court holds exclusive jurisdiction as to one cause of action, in view of a pending state court action between the same parties filed by the defendant in the District

Court action two days prior to the District Court action and involving some but not all of the issues before the District Court.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is currently reported at 715 F.2d 120 (4th Cir. 1983) and is reproduced in the Appendix to the petition as Appendix A, beginning at p. 1a.

STATUTE INVOLVED

In addition to the statutes set out in the petition, the following statute, 15 U.S.C. § 26 (1982), is involved in this case:

> Any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the antitrust laws, including sections 13, 14, 18, and 19 of this title, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of subtitle IV of title 49, in respect of any matter subject to the regulation, supervision, or other jurisdiction of the Interstate Commerce Commission. In any action

under this section in which the plaintiff substantially prevails, the court shall award the cost of suit, including a reasonable attorney's fee, to such plaintiff.

STATEMENT OF THE CASE

The petition now before this Court involves the propriety of the District Court's granting of the Respondents John J. Kruse and Leonard K. Jackson's (hereinafter "Kruse and Jackson") Motion for a Preliminary Injunction prohibiting and restraining the Petitioner, Snowshoe Company (hereinafter "Snowshoe"), from preventing Kruse and Jackson from using a 40 to 50 foot segment of a road (Black Run Road) which constitutes Kruse and Jackson's only access to a 2600 acre tract of land located in Pocahontas County, West Virginia (hereinafter the "Silver Creek Property"), upon which Kruse and Jackson and others are constructing and operating a ski resort. The District Court's order also required Snowshoe to remove any and all obstructions from Black Run Road.

Most of the relevant facts in the case now before this Court are set forth in the statement of facts section of the petition, beginning at p. 3, in the findings of fact and conclusions of law made by the District Court, which are reprinted in the Appendix to the petition as Appendix C, at pp. 11a-20a, and in the opinion of the Fourth Circuit. However, it should be noted that, contrary to the statement of Snowshoe at p. 6 of the petition, the filing of a frivolous state court action by Snowshoe is only one of several bases for the state and federal antitrust claims made by Kruse and Jackson against Snowshoe.

SUMMARY OF ARGUMENT

The Fourth Circuit's finding that the District Court did not abuse its discretion in refusing to abstain from exercising jurisdiction does not create a conflict among the circuits. The three Court of Appeals decisions cited by Snowshoe in an attempt to substantiate the existence of such a conflict are in fact clearly inapplicable to and distinguishable from the Fourth Circuit decision in this case. All three of the cases cited by Snowshoe are strictly limited to suits to quiet title to real property. Two of the decisions dealt with cases involving only issues that had already been adjudicated in state courts prior to the filing of the federal court action. The third decision fully supports the proposition that a federal district court has discretion in a case such as this to exercise jurisdiction and that the exercise of discretion should be based on a balancing of relevant factors. The case now before this Court is further distinguishable from the three cases cited by Snowshoe in that in this case the state and federal antitrust claims of Kruse and Jackson are only before the federal court and the federal court has exclusive jurisdiction of the federal antitrust claims. The District Court issued the injunction not only to protect the interests of Kruse and Jackson with respect to the issues common between the state and federal courts but also with respect to the antitrust claims.

The case now before this Court is not a case in which either the state or federal court has taken control or custody of any property. The issues common to the two courts involve only the interpretation of documents to ascertain the extent of rights of the parties to use a certain road. The policies behind the law of

abstention actually favor the exercise of jurisdiction and the issuance of the injunction in this case.

The Fourth Circuit's decision is also entirely consistent with Supreme Court precedent. None of the traditional categories of abstention are applicable in this case. Under the "exceptional circumstances" test established in *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), and as further developed in *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, —— U.S. ——, 103 S. Ct. 927 (1983), the factors relevant to the question of whether a federal district court should stay proceedings or abstain from exercising jurisdiction weigh heavily in favor of the exercise of jurisdiction by the District Court and the issuance of the injunction in this case. With the balance heavily weighted in favor of the exercise of jurisdiction even before any of the relevant factors are considered, the exercise of jurisdiction by the District Court and its issuance of the injunction clearly not only do not constitute an abuse of discretion but are positively vital to protect the interests of Kruse and Jackson with respect to all of the matters at issue between Kruse and Jackson and Snowshoe.

REASONS FOR DENYING THE WRIT

I. THE FOURTH CIRCUIT'S FINDING THAT THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO ABSTAIN FROM EXERCISING JURISDICTION DOES NOT CREATE A CONFLICT AMONG THE CIRCUITS.

In its petition, Snowshoe cites three Court of Appeals decisions which are allegedly in conflict with the decision rendered by the Fourth Circuit in the present case. The three decisions are *Smith v. Humble*

Oil and Refining Co., 425 F. 2d 1287 (5th Cir. 1970); *Neagle v. Brooks*, 373 F. 2d 40 (10th Cir. 1967); and *Butler v. Judge of the United States District Court*, 116 F. 2d 1013 (9th Cir. 1941). These decisions are in no way in conflict with the decision of the Fourth Circuit in this case, as they are easily distinguishable from the Fourth Circuit decision. All three of the cases cited by Snowshoe dealt with suits to quiet title to real property. The three decisions are strictly limited to quiet title actions and provide no support for "Snowshoe's position that cases involving a real property interest, even though the court has not taken custody of a res, require a federal court to stay or abstain where a prior state court action has commenced proceedings on the same issues and between the same parties." Petition at 14. Other than these three cases, Snowshoe has cited no authority in support of its position, which would mandate abstention in cases where abstention has never before been required.

In *Smith*, the Fifth Circuit, in a two page per curiam opinion, described a 1934 state court action to try title as a quasi in rem action. In 1965 the plaintiffs filed a state court action seeking to set aside the judgment in the 1934 state case. Subsequently, in 1968, the same plaintiffs filed suit in the United States District Court for the Eastern District of Texas, also seeking to set aside the 1934 judgment. As both the 1965 state action and the 1968 federal action merely sought relitigation of the merits of the 1934 action to try title, the Fifth Circuit also viewed these actions as quasi in rem proceedings. 425 F. 2d at 1288. The Federal District Court dismissed the plaintiffs' complaint for lack of jurisdiction, and the Fifth Circuit affirmed.

The Fifth Circuit cited *Princess Lida of Thurn and Taxis v. Thompson*, 305 U. S. 456 (1939), and other

earlier Supreme Court cases for the proposition that "once a court, state or federal, has assumed jurisdiction of an *in rem* or *quasi in rem* proceeding, then that court may exercise its jurisdiction to the exclusion of any court and the res in question is withdrawn from the jurisdiction of any other court." 425 F. 2d at 1288. That the categories of cases which qualify as in rem or quasi in rem proceedings is strictly limited is evident from the opinion in *Princess Lida of Thurn and Taxis:*

> [T]he principle applicable to both federal and state courts that the court first assuming jurisdiction over property may maintain and exercise that jurisdiction to the exclusion of the other, is not restricted to cases where property has been actually siezed under judicial process before a second suit is instituted, but applies as well where suits are brought to marshal assets, administer trusts, or liquidate estates, and in suits of a similar nature where, to give effect to its jurisdiction, the court must control the property. The doctrine is necessary to the harmonious cooperation of federal and state tribunals.

305 U. S. at 466.

It is thus clear that the types of proceedings to be classified as in rem or quasi in rem for jurisdictional purposes are confined to those where "the court must control the property," in which cases to have two courts attempting to control and administer the same property simultaneously would result in chaos. The case now before this Court is not such a case. Rather, it is a case in which neither the state court nor the federal court has had to take control of any property. Snowshoe has admitted, in its own statement of its position quoted above, that the state court has not

taken custody of a res. There is no dispute as to the ownership of any property in this case. The courts have simply been asked to interpret documents to ascertain the extent of the rights of the parties to use a certain road. The District Court injunction actually promotes the "harmonious cooperation" of state and federal courts by preserving the status quo pending a final resolution of the road use issue on the merits, and the injunction and the decision on the merits already obtained in the state court action are entirely harmonious.

In *Neagle,* the Tenth Circuit affirmed the district court's granting of the defendants' motion for summary judgment, "holding that res judicata foreclosed [the] appellant's federal court suit alleging the same cause of action, against the same parties, and involving the same subject matter" as a previous state court adjudication. 373 F. 2d at 42. Judge Kerr wrote for the Tenth Circuit:

> Appellant selected her own forum when she commenced her quiet title action in the state court of Kansas. Having gambled and lost there she voluntarily abandoned the prosecution of her appeal when she filed her petition in the United States District Court. The federal courts are not alternate forums to supply "procedural fencing".

373 F. 2d at 42-43.

The Tenth Circuit in *Neagle,* as did the Fifth Circuit in *Smith,* cited *Princess Lida of Thurn and Taxis,* and expressed the opinion that a quiet title action is an in rem action subject to the rule expressed in that case. Judge Kerr also pointed to a specific state statutory right to institute a quiet title action which required

that such an action be brought in the county in which the real estate is situated. *Id.* at 43.

As to its opinion that the district court lacked jurisdiction over the case, the Tenth Circuit wrote:

> It is inconceivable that the framers of the Constitution intended that due process of law required the federal courts to perform the work already accomplished by the state court and to assume jurisdiction over actions fully and finally determined in state trial courts. The federal court is not a substitute tribunal of an unsuccessful litigant on the state level.

Id. at 44-45.

In *Butler,* the Ninth Circuit denied a petition for a writ of mandamus to compel the respondent federal district judge to proceed with the trial of a suit to quiet title where the judge had stayed further proceedings to await the result of a prior state action, since the issues in the two cases were the same. 116 F.2d at 1015. Contrary to the Fifth Circuit opinion in *Smith* and the Tenth Circuit opinion in *Neagle,* the Ninth Circuit in *Butler* was of the opinion that both the state and federal court had jurisdiction of the actions brought therein. Although the Ninth Circuit recognized the existence of the rule "that when the proceedings are in rem or quasi in rem the court first obtaining possession of the res should proceed to final judgment and that the court of concurrent jurisdiction should suspend proceedings and await the conclusion of the case in the court having actual or potential possession of the res," it rejected this rule as being dispositive of the case before it and stated that "[t]he real question is whether or not, under the circumstances, it was an abuse of discretion for the respondent judge to stay proceedings in his court in order to permit the trial of

the prior action in the state court." 116 F.2d at 1015. The Ninth Circuit went on to hold "that the trial court had the discretion to stay proceedings before it pending the prompt determination of the same issue in the state court in an action brought prior to the action in the federal court." *Id.* at 1016. An important factor to the Ninth Circuit in upholding the trial court's exercise of discretion was that due to the nature of the case it would be expensive to try both actions and that the state court was promptly proceeding with the case. The Ninth Circuit emphasized, however, that the trial court retained jurisdiction and could modify its order if the situation changed. *Id.*

Butler is remarkably consistent with the cases decided by the Supreme Court of the United States in *Colorado River Conservation District v. United States,* 424 U.S. 800 (1976), and *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.,* —— U.S. ——, 103 S. Ct. 927 (1983), in that instead of the mechanical application of the rule of *Princess Lida of Thurn and Taxis* to a quiet title action, it stressed the exercise of discretion and judgment by the federal district court in deciding whether to stay proceedings pending a prior state court action, which exercise of judgment " 'must weigh competing interests and maintain an even balance.' " 116 F.2d at 1016 (quoting *Landis v. Northern American Co.,* 299 U.S. 248, 255 (1936)).

Contrary to the position urged by Snowshoe, which portrays the Fifth, Tenth and Ninth Circuit decisions discussed above to be consistent with each other and yet in conflict with the Fourth Circuit decision in the present case, in actuality the decisions of the Fifth and Tenth Circuits are arguably inconsistent with that of the Ninth, but none are in conflict with the Fourth

Circuit decision in the present case, which does not deal with a quiet title action and which is otherwise distinguishable from those three cases. The Fifth and Tenth Circuit decisions are only arguably inconsistent with that of the Ninth because the *Smith* and *Neagle* decisions dealt with issues that had already gone to judgment in state courts prior to the bringing of the federal court action and those cases perhaps could have been decided on res judicata or collateral estoppel grounds.

Another important factor distinguishing the Fourth Circuit decision in the case now before this Court from the three cases cited by Snowshoe is that even after resolution of the issues common to the state and federal court actions, the state and federal antitrust claims asserted by Kruse and Jackson against Snowshoe are only at issue in the federal court action, and the federal antitrust claims are exclusively within the jurisdiction of the federal courts. *Freeman v. Bee Machine Co.*, 319 U.S. 448 (1943); *Blumenstock Bros. Advertising Agency v. Curtis Publishing Co.*, 252 U.S. 436 (1920). Thus, even if the District Court wished to exercise its discretion to abstain to the fullest possible degree, abstention could only be applied to some of the issues before it. Indeed, the state court's ruling on the merits against Snowshoe on the issues of Snowshoe's alleged right of first refusal and right to control Black Run Road bolsters Kruse and Jackson's antitrust claims and makes the continuing jurisdiction of the District Court over the matters in dispute between the parties more vital than ever.

Although issuance of the injunction by the District Court would not constitute an abuse of discretion even if the injunction only served to protect the rights of Kruse and Jackson in respect to the issues common

to the state and federal actions, the District Court's exercise of jurisdiction is mandatory and exclusive, and its issuance of the injunction is justified by the need to protect Kruse and Jackson's interests, with respect to the state and federal antitrust claims. Injunctive relief is provided for in private antitrust actions to protect plaintiffs against continuing antitrust violations. 15 U.S.C. § 26 (1982). *See Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 491 (1977). The District Court's finding of fact number 22, reprinted in Appendix C to the petition at pp. 17a-18a, and conclusion of law number 26, reprinted in Appendix C to the petition at p. 19a, indicate that the District Court viewed the issuance of the injunction as relevant and necessary to the protection of Kruse and Jackson's interests with respect to all of their federal court claims, and not solely those claims at issue in both the state and federal court actions. The Fourth Circuit found that the findings of fact made by the District Court were not clearly erroneous. *Kruse v. Snowshoe Company*, 715 F.2d 120, 122 at fn. 3 (4th Cir. 1983). Specifically, the District Court found that the only harm alleged by Snowshoe from the granting of injunctive relief would be the limitations the injunction would place on Snowshoe's ability to hinder or restrain competition and concluded that restraint of competition is not a justification for denial of injunctive relief. It is evident that the antitrust claims, which will remain before the District Court regardless of the outcome of any appeal of the state court's rulings in favor of Kruse and Jackson, are not mere window dressing but are bona fide claims which are intertwined with the other issues in this case and which add considerably to the necessity for continuance of the injunction.

II. THE FOURTH CIRCUIT'S FINDING THAT THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN REFUSING TO ABSTAIN FROM EXERCISING JURISDICTION IS ENTIRELY CONSISTENT WITH SUPREME COURT PRECEDENT.

In its petition, Snowshoe unsuccessfully attempts to distinguish a recent Supreme Court of the United States case, *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, —— U. S. ——, 103 S. Ct. 927 (1983), with respect to the position Snowshoe has taken before this Court. In that case, the federal district court stayed a federal court suit by Mercury pending resolution of a previous state court suit brought by the Hospital "because the two suits involved the identical issue of the arbitrability of Mercury's claims." 103 S. Ct. at 933. The Fourth Circuit reversed the stay order and this Court affirmed the Fourth Circuit.

As to abstention generally, this Court has noted the very narrow scope of its proper use:

> Abstention from the exercise of federal jurisdiction is the exception, not the rule. 'The doctrine of abstention, under which a District Court may decline to exercise or postpone the exercise of its jurisdiction, is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it. Abdication of the obligation to decide cases can be justified under this doctrine only in the exceptional circumstances where the order to the parties to repair to the State court would clearly serve an important countervailing interest.'

Colorado River Water Conservation District v. United States, 424 U. S. 800, 813 (1976) (quoting *County of Allegheny v. Frank Mashuda Co.*, 360 U. S. 185,

188-89 (1959)). The Court in *Colorado River* discussed three traditional categories of abstention, none of which it found applicable in that case and none of which Snowshoe contends apply in this case.

However, the Court in *Colorado River* upheld the district court's dismissal on the basis of "considerations of '[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation.' " 424 U. S. at 817 (quoting *Kerotest Mfg. Co. v. C-O-Two Fire Equipment Co.*, 342 U. S. 180, 183 (1952)). The *Colorado River* Court pointed out that " 'the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction,' " and that the federal courts have a "virtually unflagging obligation . . . to exercise the jurisdiction given them." 424 U. S. at 817. The *Colorado River* Court further noted that "the circumstances permitting the dismissal of a federal suit due to the presence of a concurrent state proceeding for reasons of wise judicial administration are considerably more limited than the circumstances appropriate for abstention." Id. at 818.

The *Colorado River* Court discussed four factors appropriate for consideration by a federal court in applying the so-called "exceptional circumstances" test. *Id.* The Court in *Moses H. Cone Memorial Hospital* summarized the application of the four factors to that case:

> [T]he first two factors mentioned in *Colorado River* are not present here. There was no assumption by either court of jurisdiction over any res or property, nor is there any contention that the federal forum was any less convenient

> to the parties than the state forum. The remaining factors — avoidance of piecemeal litigation, and the order in which jurisdiction was obtained by the concurrent forums — far from supporting the stay, actually counsel against it.

103 S. Ct. at 939. Even though it is clear that the case now before this Court does not include the assumption by either court of jurisdiction over any res or property, even if such an assumption had taken place it would be only one factor to consider under *Colorado River* and would not mandate abstention or justify finding that the District Court abused its discretion.

The *Cone* Court also cautioned against a mechanical application of the applicable factors:

> [T]he decision whether to dismiss a federal action because of parallel state-court litigation does not rest on a mechanical checklist, but on a careful balancing of the important factors as they apply in a given case, *with the balance heavily weighted in favor of the exercise of jurisdiction.* The weight to be given to any one factor may vary greatly from case to case, depending on the particular setting of the case.

103 S. Ct. at 937 (emphasis added.)

It is clear from *Colorado River* and *Moses H. Cone Memorial Hospital* that because the balancing of the interests behind the relevant factors weighs heavily in favor of the exercise of jurisdiction, the decision of a district court in its discretion to exercise jurisdiction is subject to far less strict scrutiny than is a decision not to exercise jurisdiction. The District Court in this case has, in its discretion, exercised jurisdiction by granting a preliminary injunction preventing Snowshoe from obstructing Kruse and Jackson's access to the Silver Creek Property by way of Black Run Road.

As the state court has already ruled on the issues before it (and in favor of Kruse and Jackson), no purpose would be served in lifting the injunction prior to a final state court resolution by the running of Snowshoe's appeal period or by a final ruling by the Supreme Court of Appeals of West Virginia, especially inasmuch as the injunction and the state court's rulings are in total accord.

The multi-factor analysis applicable to the exercise of the District Court's discretion strongly favors continuation of the injunction, and the Fourth Circuit properly applied that analysis. Despite Snowshoe's contentions, the state court did not assume jurisdiction or control over any res or property. *Kruse v. Snowshoe Company,* 715 F.2d 120, 124 (1983). The state court simply decided the rights of the parties under various documents which describe the rights of the parties to use Black Run Road. Second, the federal forum is actually more convenient to the parties than the state forum, inasmuch as counsel for all parties are located in Charleston, the site of the District Court. The Fourth Circuit found that the federal forum was "not any less convenient to the parties than the state forum." *Id.* at 123. Third, continuance of the injunction will promote the orderly resolution of the dispute between the parties and will therefore help avoid further legal maneuvering prior to the running of Snowshoe's appeal period or a final decision by the Supreme Court of Appeals of West Virginia, i.e., "piecemeal litigation" will be avoided. The Fourth Circuit found that exclusive jurisdiction over the federal antitrust claims presented "a policy opposite to the policy of avoidance of piecemeal litigation . . . ." *Id.* at 124. The priority factor should be given relatively little weight as compared to the other factors in

this case because of the federal antitrust claim before the federal court, which is not before the state court. Kruse and Jackson do not dispute that the state court action was brought a mere two days before the federal court action, but the Fourth Circuit agreed that the priority factor was of little weight in this case, due to the passing of only two days between the actions' filings and the "substantial progress" that had been made in both actions. *Id.* The balance of these factors, especially with the balance from the outset being weighted heavily in favor of the exercise of jurisdiction, strongly favors continuance of the injunction.

It cannot be overemphasized that the decision of the District Court to exercise jurisdiction by granting the preliminary injunction is a matter left to its discretion, and that the exercise of jurisdiction in such cases is heavily favored. *Will v. Calvert Fire Insurance Co.*, 437 U.S. 655, 663-65 (1978). As the *Cone* court stated,

> [O]ur task in cases such as this is not to find some substantial reason for the *exercise* of federal jurisdiction by the district court; rather, the task is to ascertain whether there exist "exceptional" circumstances, the "clearest of justifications," that can suffice under *Colorado River* to justify the *surrender* of that jurisdiction. Although in some rare circumstances the presence of state-law issues may weigh in favor of that surrender, . . . ***the presence of federal-law issues must always be a major consideration weighing against surrender.***

103 S. Ct. at 942 (emphasis in last sentence added). The Fourth Circuit properly considered the presence of the federal antitrust claims in upholding the District Court's exercise of jurisdiction and issuance of

the injunction. *Kruse v. Snowshoe Company*, 715 F.2d at 124.

Another consideration established in *Moses H. Cone Memorial Hospital* is the adequacy of the state court proceedings to protect the rights of the party urging federal court action and the adequacy of the state court proceeding in resolving the various issues between the parties:

> When a district court decides to dismiss or stay under *Colorado River*, it presumably concludes that the parallel state-court litigation will be an adequate vehicle for the complete and prompt resolution of the issues between the parties. If there is any substantial doubt as to this, it would be a serious abuse of discretion to grant the stay or dismissal at all . . . . Thus, *the decision to invoke Colorado River necessarily contemplates that the federal court will have nothing further to do in resolving any substantive part of the case, whether it stays or dismisses.*

103 S. Ct. at 943 (citation omitted) (emphasis added). There is no doubt that the state and federal antitrust claims in the District Court action will survive the state court proceedings and that the District Court's issuance of the preliminary injunction is not only not an abuse of its discretion but is necessary to protect Kruse and Jackson's interests and to provide for the orderly resolution of all of the issues in dispute between Kruse and Jackson and Snowshoe.

The Fourth Circuit followed *Colorado River* and *Moses H. Cone Memorial Hospital* faithfully in finding that the District Court did not abuse its discretion in exercising jurisdiction. It discussed the factors enumerated in *Colorado River* and expanded upon in

Moses H. Cone Memorial Hospital, and found "little justification for abstention," much less any justification at all for finding that the District Court abused its discretion by exercising jurisdiction. *Kruse v. Snowshoe Company*, 715 F.2d at 124.

CONCLUSION

Based on the foregoing, Kruse and Jackson assert that the District Court did not abuse its discretion in exercising jurisdiction and issuing the injunction. The District Court's injunction should be continued not only because it was not an abuse of discretion for it to be issued in the first place, but also because it protects the various interests relevant in such cases. Therefore, Kruse and Jackson respectfully request that this Court deny the petition for a writ of certiorari to review the judgment of the Fourth Circuit.

Respectfully submitted,

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